

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDRE CALHOUN : CIVIL ACTION
 :
 v. :
 :
 DR. FRIEDMAN and DR. MOYER : No. 95-5993

O R D E R - M E M O R A N D U M

AND NOW, this 3rd day of April, 1998, the motion for summary judgment of defendants Friedman and Moyer is granted. Fed.R.Civ.P. 56.¹

In September, 1995 plaintiff Andre Calhoun, a state prisoner and resident of the Renal Treatment Unit at S.C.I. Graterford, Pa. filed this § 1983 action (Calhoun I). Plaintiff's pro se amended complaint² alleged that the medical care plaintiff received in the Renal Treatment Unit -

¹ Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The movant has the burden of showing that there is no triable issue. The opposing party must point to specific, affirmative evidence in the record - and not simply rely on allegations or denials in the pleadings - in order to defeat a properly supported motion. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986); Charlton v. Paramus Board of Education, 25 F.3d 194, 197 (3d Cir. 1994).

² Plaintiff's original and amended complaints were filed pro se; counsel subsequently was appointed. The claims in the original complaint concerned an inadequate renal diet plan. The amended complaint added claims against defendants Drs. Friedman and Moyer for treatment received following a kidney transplant.

specifically, during the four-month period following a kidney transplant - was so inadequate as to violate the Eighth Amendment.³

This action is barred by claim preclusion. Claim preclusion prevents a party from litigating issues that might have been but were not raised in a prior action. Arab African International Bank v. Epstein, 10 F.3d 168, 171 (3d Cir. 1993) (citation omitted). Here, an action was filed in January 1996 by plaintiff and another prisoner (Calhoun II) and assigned to Judge Shapiro of this court.⁴ The complaint in Calhoun II raised substantially similar claims to those in Calhoun I - that Graterford officials and medical personnel provided inadequate medical care to inmates in the Renal Treatment Unit amounting to Eighth Amendment violations. See Calhoun and Morrow v. Horn et al., No. 96-530, 1997 W.L. 672629 at *1 (E.D. Pa. Oct. 29, 1997). After a non-jury trial, judgment was entered against both plaintiffs and for all defendants. Id. at *6. Judge Shapiro's adjudication found as a matter of law that plaintiffs Calhoun and Morrow had failed to prove that treatment in the Renal Treatment

³ See plaintiff's statement of position on the effect of Judge Shapiro's decision: "[T]he crux of plaintiff's case [is that] Mr. Calhoun, as a very recent kidney transplant patient who was in the process of rejecting his transplant, did not receive the care and treatment that a person with his specific medical condition requires regardless of the general conditions existing within the Renal Treatment Unit at the time."

⁴ Civil Action No. 96-350. In October, 1997, plaintiffs' motion for class certification was denied. Calhoun and Morrow v. Horn et al., No. 96-350, 1997 W.L. 633682 at *1 (E.D. Pa. Oct. 8, 1997).

Unit was so inadequate as to establish "deliberate indifference" to plaintiffs' serious medical needs. Id. at *5.

Plaintiff Calhoun now argues that his claims in Calhoun I are not barred by Judge Shapiro's findings in Calhoun II. His reason is that the expert in Calhoun II reviewed the treatment procedures of the Renal Treatment Unit as a whole - and did not consider the treatment received by plaintiff as an individual patient in the unit.⁵ The law on claim preclusion, however, is that where there is (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action, claim preclusion applies. Arab African International Bank, 10 F.3d at 171.

Here, there is a final judgment on the merits in a suit that, although filed subsequently, was decided previously. Drs. Friedman and Moyer, the defendants in this action, were also defendants in Calhoun II. The same causes of action are present in both actions - inadequate medical care in the Renal Treatment Unit amounting to violations of prisoners' Eighth Amendment rights. Because Judge Shapiro considered the adequacy of medical treatment in the Renal Treatment Unit as a whole, plaintiff's more specific individual claims are necessarily included within

⁵ "Neither the expert report nor Judge Shapiro's decision in any degree raised or addressed whether or not specific treatment that Mr. Calhoun, in particular, received, or failed to receive, at the hands of defendants was so substandard to be considered deliberately indifferent to plaintiff's rights." Plaintiff's statement at 2.

her conclusion.⁶ It is not contended that the claims in Calhoun I were expressly reserved in Calhoun II. Whether or not the expert in Calhoun II was charged with reviewing plaintiff's specific allegations, plaintiff had the opportunity to raise them. Therefore, his claims in this action are precluded.

Edmund V. Ludwig, J.

⁶ Relevant to this action, Judge Shapiro found that the Renal Treatment Unit staff observe precautions throughout the facility, provide adequate counseling of patients, that referrals to regular prison doctors and outside specialists "appear to occur smoothly and in a timely manner," the mortality rate in the unit is lower than the national average, and that inmates receive appropriate medical care in the Renal Treatment Unit. 1997 W.L. 672629 at *1-2.